IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 32512 of 2003(U)

PETITIONER:

MOHANA RAVI VARMA, MIDHILA PALACE 8,
CHAKKALAMUTTU ROAD, NORTH FORT GATE,
THRIPPUNITHURA.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS:
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1. **THE ASSISTANT MANAGER,**
   INDIAN BANK, CIRCLE OFFICE,
   ERNAKULAM.

2. **THE CHIEF MANAGER, INDIAN BANK,**
   81, RAJAJI SALI, CHENNAI.

3. **THE ASSISTANT LABOUR COMMISSIONER**
   O/O.THE REGIONAL LABOUR COMMISSIONER(CENTRAL),
   GOVERNMENT OF INDIA, MINISTRY OF LABOUR,
   KENDRIYA SRAM SADAN, OLIMUGHAL,
   KAKKANAD, KOCHI 30.

BY ADV. SRI.S.EASWARAN
SRI.FRANCIS JOSEPH KURISINKAL, ADDL.CGS
SMT.T.D.RAJALAKSHMI SCGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.32512/2003

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 :- COPY OF THE LETTER DT. 30.12.2000 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P2:- COPY OF THE REPLY RECEIVED BY THE PETITIONER FROM THE RESPONDENT BANK DT. 10. 9.01.

EXT.P3:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT BANK DT. 6.10.01.

EXT.P4:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT BANK DT. 25.4.02.

EXT.P5:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT BANK DT. 25.4.02.

EXT.P6:- COPY OF THE LETTER DT. 8.4.02 SENT BY THE LABOUR ENFORCEMENT OFFICER TO THE RESPONDENT BANK, CHENNAI.

EXT.P7:- COPY OF THE PROCEEDINGS OF THE RESPONDENT BANK DT. 1.12.01.

EXT.P8:- COPY OF THE EXTRACT OF THE PENSION REGULATION OF THE RESPONDENT BANK SUBMITTED BEFORE THE 3RD RESPONDENT.

EXT.P9:- COPY OF THE SERVICE REGISTER OF THE PETITIONER SUBMITTED BY THE RESPONDENT BANK TO THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE PROCEEDINGS OF THE ASSISTANT LABOUR COMMISSIONER (CENTRAL) ALONG WITH HIS LETTER DT. 8.4.03 GIVEN TO THE REPRESENTATIVE OF THE PETITIONER.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE PENSION REGULATION, 1995, OF INDIAN BANK EMPLOYEES.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.32512 OF 2003

Dated this the 4th day of December, 2007

JUDGMENT

The petitioner joined the service of a banking institution called the Bank of Thanjavoor, which was later amalgamated with the Indian Bank. During her career, she unfortunately met with an accident leading her to go on leave on different counts and ultimately seek the management's indulgence to go out on voluntary retirement in terms of the scheme in that regard. Thereafter, she claimed that she was entitled to pension on voluntary retirement, in terms of the regulations. However, the management took the stand that she did not have the minimum service to her credit to earn such pension, because, during the course of her career, she had enjoyed extra-ordinary leave which cannot be counted as part of service, unless appropriate orders are applied for and obtained from the management to regularise such leave. Be that as it may, the petitioner, on being so advised at that point of time, moved the third respondent for an order on the issue, which turned out to be Ext.P10, by which, the third respondent concluded that the petitioner did not have the

minimum service to earn pension on ground of voluntary retirement.

2. I am afraid that the third respondent has apparently exceeded the jurisdiction in the matter of resolving the issue. I say so, because, in the process of conciliation which could have been possible, it would not be available within the jurisdiction of the third respondent to sit in judgment on the claims of the petitioner and conclude against her once for all, as if he was deciding a lis. Not only that, even if it was left to the wisdom of the management, and the petitioner has initiated the appropriate course of action, the petitioner could have approached the doors of the management for appropriate relief at least in terms of benevolence, to regularise the extra-ordinary leave that she had enjoyed, because, she had availed such leave only in connection with the physical situation in which she was placed after the accident. Even as of now, it will be open to the management to consider her such request and conclude on the question whether she is entitled to pension on voluntary retirement in terms of rules.

3. To aid the aforesaid, the impugned Ext.P10 is quashed and the writ petition is allowed directing that if the petitioner makes appropriate application to regularise the extra-ordinary leave availed of by her, the same will be taken up, considered and disposed of by the competent authority and appropriate decision shall be taken in accordance with law, after affording hearing opportunity to the petitioner. Let the needful be done within three months from the date of receipt of the representation from the petitioner seeking regularisation of leave and grant of pension on voluntary retirement. The grant of pension would obviously be subject to the decision that the Bank would take on the question of regularisation of the leave. The petitioner will place a copy of this judgment along with the representation.

The writ petition is disposed of with the above directions.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.